

**IN THE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

# HORTON HOMES, INC.,

**Plaintiff,**

**V.**

**Case No.**

**LARUE BANDY, MARIE BANDY, PATRICK PRITCHETT, WILLIAM SHANER, ELSIE FONDREN AVERETTE, WILLIAM CRUTHIRDS, and SHERRIE CRUTHIRDS,**

**2:07-CV-506-MEF**

## Defendants.

**RESPONSE OF HORTON HOMES, INC. TO  
DEFENDANTS' OPPOSITION TO CONTEMPORANEOUS  
TESTIMONY AND MOTION FOR CONTINUANCE**

Plaintiff Horton Homes, Inc. (“Plaintiff Horton” or “Horton Homes”), submits the following response to Defendants’ Opposition to Plaintiff Horton’s motion to permit testimony by contemporaneous transmission and opposition to the defendants’ motion for continuance:

1. On October 16, 2007 this court rescheduled a hearing on Horton Homes’ motion for preliminary injunction, yet Defendants have waited until October 22 to file a motion to reschedule the hearing on the ground that “Mike Harper had a conflict on that [October 26, 2007] date and anticipated filing a motion to reschedule said hearing.” Opposition, ¶2. Mr. Harper does not

identify the conflict nor does he offer any reason for the delay in making the request for the continuance that he “anticipated filing.”

2. Paragraph 3 of the Defendants’ Opposition refers to a fax letter dated October 17, 2007 from Horton’s counsel Sydney F. Frazier, Jr., with reference to which defendants state that “Mr. Frazier indicated that if we did not agree for testimony to be taken by video he would request a continuance for which we of course, would not object due to Harper’s conflict.” There is no Exhibit A attached to Defendants’ Opposition, but Mr. Frazier’s October 17, 2007 letter has been attached to this filing as Exhibit A and made a part hereof. As the court will see, the suggestion that Horton Homes would agree to a continuance in the absence of agreement on Mr. Horton’s testimony appears nowhere in the subject correspondence.

3. Finally, defendants state that the testimony of Dudley Horton “may be significant” and deserving of the right to cross-examine the witness in the presence of the court. Opposition, ¶6. By means of the contemporaneous live video testimony, both of the foregoing objectives will be accomplished, and thus defendants offer no substantive objection to the plaintiffs’ Rule 43 motion.

Based on the foregoing analysis, Horton Homes submits (a) that the defendants’ opposition to the request for contemporaneous video testimony is

insufficient to overcome the substantive merits of the motion and (b) that the request for a continuance is due to be denied.

This 22nd day of October, 2007.

/s/ Sydney F. Frazier, Jr.

Sydney F. Frazier, Jr. (FRA007)

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/s/ James L. Paul

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/s/ Thomas C. Grant

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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing RESPONSE OF HORTON HOMES, INC. TO DEFENDANTS' OPPOSITION TO CONTEMPORANEOUS TESTIMONY AND MOTION FOR CONTINUANCE has been filed using the CM/ECF system and will be served by the system on:

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This 22nd day of October, 2007.

/s/ Sydney F. Frazier, Jr.

# **EXHIBIT A**

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October 17, 2007

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**RE: Civil Action No. CV-07-507-MEF  
U.S. District Court for the Middle District of Alabama  
Horton Homes v. Larue Bandy, et al.**

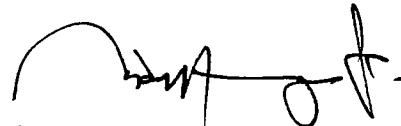
Gentlemen:

Mr. Horton continues to have some medical problems which lead his doctors to advise against travel to Alabama. We are therefore arranging to present his testimony in court next Friday by live contemporaneous video and Judge Fuller's office has requested that we ask whether you will have any objections. We will be filing a motion tomorrow. Please let us know as soon as you can. Thank you.

Very truly yours,

CABANISS, JOHNSTON, GARDNER,  
DUMAS & O'NEAL LLP

By



Sydney F. Frazier, Jr.  
Attorneys for Horton Homes, Inc.

SFFJr/cnj

cc: James L. Paul, Esq. (by email)  
Thomas C. Grant, Esq. (by email)